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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,611	01/24/2001	Barry Fruchtman	SJ0920000171US1	5230
24033	7590	01/27/2005	EXAMINER	
KONRAD RAYNES & VICTOR, LLP 315 S. BEVERLY DRIVE # 210 BEVERLY HILLS, CA 90212			OSMAN, RAMY M	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/769,611	Applicant(s) FRUCHTMAN ET AL.	
	Examiner Ramy M Osman	Art Unit 2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. This communication is responsive to the amendment filed on August 24, 2004. Claims 1-4,7,8,14-17,20,21,27-30,33 and 34 were amended. No claims were added or cancelled. Claims 1-39 are pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-11,14-24 and 27-37 rejected under 35 U.S.C. 102(e) as being anticipated by Davies et al (US Patent No 6,839,767).**

4. In reference to claims 1,14 and 27, Davies teaches a method, a system and an article of manufacture for managing client transactions requesting access to a shared resource, comprising:

logging client transactions in a log file from multiple clients (column 8 lines 10-35 and column 9 lines 15,16&45-51, Davies discloses recording client connections over a network);

determining one client transmitting data at a transmission rate less than a threshold transmission rate (column 7 lines 20-40, column 10 lines 55-67 and column 11 lines 1-15 & 33-45, Davies discloses determining a rate below a threshold); and

denying subsequent transactions from the determined client access to the shared resource to provide additional space in the log file for new transactions from additional clients requesting access to the resource (column 7 lines 20-40 and column 9 lines 45-51, Davies discloses terminating the connections).

5. In reference to claims 2,15 and 28 Davies teaches the method, the system and the article of manufacture of claims 1,14 and 27, further comprising removing all pending transaction of the determined client from the log file (column 9 lines 45-51).

6. In reference to claims 3,16 and 29, Davies the method, the system and the article of manufacture of claims 1,14 and 27, wherein clients submit transactions requesting the resource during a session that the clients initiate, further comprising:

determining one client session active longer than a threshold time period, wherein the determination of whether the client data transmission rate is less than the threshold transmission rate is made for the determined client whose session is active longer than the threshold time period, and wherein subsequent transactions are denied access to the shared resource for the client having the session active longer than the threshold period of time and having the data transmission rate less than the threshold transmission rate (column 9 lines 45-51 and column 10 line 55 – column 11 lines 45).

7. In reference to claims 4,5,17,18,30 and 31, Davies the method, the system and the article of manufacture of claims 1,14 and 27, further comprising:

determining one client that has transmitted a threshold amount of data, wherein the determination and removal from the log file of pending transactions whose access to the resource has completed is made for all the pending transactions of the determined client that has transmitted the threshold amount of data (column 7 lines 20-40 and column 9 lines 45-51).

8. In reference to claims 6,19 and 32, Davies the method, the system and the article of manufacture of claims 1,14 and 27, wherein an oldest pending transaction logged in the log file is capable of preventing new transactions from being added to the log file (column 9 lines 45-51).

9. In reference to claims 7-9,20-22 and 33-35, the methods involved in storing transactions in a log file are well-known in the art, as stated by applicant on (pages 4 and 5) of the disclosure and expressed in (figure 2).

10. In reference to claims 10,11,23,24,36 and 37, Davies the method, the system and the article of manufacture of claims 1,14 and 27, wherein access to the resource is provided through a server, wherein the server maintains the log file; and redirecting transactions from the determined client to an additional server providing access to another copy of the resource requested by the client transactions (column 7 lines 20-67).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 12,13,25,26,38 and 39 rejected under 35 U.S.C. 103(a) as being unpatentable over Davies et al (US Patent No 6,839,767) in view of Forecast et al (US Patent No 6,230,200).

13. Davies the method, the system and the article of manufacture of claims 1,14 and 27 above. Davies fails to explicitly teach wherein the resource comprises a storage device and wherein the transactions provide updates to data in the storage device; and wherein the update transactions are provided by a client backup program to backup client data in the storage device. However, Forecast teaches a client backing up and updating data in a storage device, to maintain performance guarantees in resource allocations for a file server (columns 1 lines 15-33, column 2 lines 15-50 and column 27 line 34 – column 28 line 25).

It would have been obvious for one of ordinary skill in the art to modify Davies wherein the resource comprises a storage device and wherein the transactions provide updates to data in the storage device; and wherein the update transactions are provided by a client backup program to backup client data in the storage device as per the teachings of Forecast so as to maintain a level of performance in resource allocation for a file server.

Response to Amendment

14. Examiner acknowledges the amendment filed on August 24,2004. Applicant amended the specification. Claims 1-4,7,8,14-17,20,21,27-30,33 and 34 were amended. No claims were added or cancelled.

Response to Arguments

15. Applicant's arguments with respect to claims 1-32 have been considered but are moot in view of the new ground(s) of rejection.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramy M Osman whose telephone number is (571) 272-4008. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2157

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RMO
January 18, 2005



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